Supreme Court of the United States,

OCTOBER TERM, 1900.

No. 190.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y.,
Plaintiff in Error,

vs.

LAWRENCE S. WELLING and MARION BONNOITT,
Defendants in Error.

No. 17,620.

Statement of the Case.

The facts of this case, shown by the record, and which we deem material to the questions involved, are as follows:

1. Plaintiff in error (defendant below) is a corporation organized under the laws of the State of New York in 1890, with its corporate *situs* and principal place of business in Syracuse, New York.

Articles of Incorporation, Transcript, pp. 21, 26, 27.

2. The corporation was organized under Chapter 122 of the Laws of New York of 1851, as amended by Chapter 564 of the Laws of New York of 1875,

and both of these statutes were given in evidence and appear in the record in this case.

Transcript, pp. 67–71, 71–74.

3. The articles of incorporation (the corporate charter) were given in evidence and appear in the record.

Transcript, pp. 21–28.

4. The by-laws of the corporation were also given in evidence and appear in the record.

Transcript, pp. 28–38.

5. The decision and opinion of the Supreme Court of New York, General Term, in the case of *O'Malley v. People's B. & L. Assn.*, reported in 92 Hun. (N. Y.), 572, was also formally given in evidence upon the trial in behalf of the corporation.

Transcript, pp. 74–78.

6. The decision and opinion of the Court of Appeals of New York in *Englehardt v. Fifth Ward Savings & Loan Assn.* (148 N. Y., 281), was given in evidence and the point as to which it was relied upon was condensed and stated in the record upon appeal to the Supreme Court of South Carolina, as shown in the record in this court as follows:

"In the case of *Englehardt* v. *Fifth Ward Dime Savings and Loan Assn.*, reported 148 N. Y., at page 281, it was held that the articles of association, which showed the scheme of the organization and defined the obligations of the association and the rights of members, are binding upon each member thereof. They establish the relation between the association and the stockholders and constitute a contract between them."

Transcript, p. 78.

7. The decision and opinion of the Court of Appeals of New York in *People* v. *Lowe* (117 N. Y.,

175), was given in evidence in behalf of the corporation and appears in the record.

Transcript, pp. 78–85.

8. In like manner, the case of *Concordia Savings, &c., Assn.* v. *Read* (93 N. Y., 474), was given in evidence in behalf of the corporation.

Transcript, pp. 85–87.

9. D. A. Pierce, an attorney at law, residing in Syracuse, New York, practicing in that State since 1884, and showing himself to be specially familiar with the laws of New York in relation to building and loan associations, testified as a witness and stated in detail the law of New York in relation to building and loan associations, their relations to and contracts with their members and the decisions of the New York Courts construing the laws of New York in relation to such associations and the status of their members. The testimony of Mr. Pierce is important and material as it appears in the record. Upon particular points it will be referred to more specifically later on in this statement, but at this time we direct the attention of the Court to the matter because it makes quite clear most of the issues arising in this case.

Transcript, pp. 61–65.

10. Plaintiff in error is a purely mutual association, having no fixed or paid in capital stock apart from the contributions of its members, all of whom occupy the same *status* in relation to the association and each other, their rights, duties and obligations being equal, mutual and reciprocal.

Transcript, p. 21, Articles of Incorporation, par. II.; p. 24, par X; p. 25, par XV;

Transcript, p. 28, By-Laws; p. 32, By-Laws, Art. XIV, § 1; p. 34, By-Laws, Art. XIV, pp. 13, 14; p. 35, By-

Laws, Art. XIV, § 21; p. 35. By-Laws, Art. XV, §§ 1, 2.
Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281, 284.
People *ex rel.* Fairchild *v.* Preston, 140 N. Y., 549, 554.
House *v.* Eastern B. & L. Assn., 52 App. Div. (N. Y.), 163.

10. In such an association the members constitute the corporation in the strictest sense of the term, and in contracting membership individually they contract with themselves collectively, and no one member has or can obtain, through the contract of membership, any preference or priority over another that violates the principle of mutuality. The provisions of the articles of association and by-laws are binding upon all the members, and when adopted or amended by them collectively cannot be questioned or their operation denied by individual members. These associations are *quasi* partnerships and are dealt with by the courts as such.

1 Morawetz on Corp. (2nd ed.), §§ 1, 45, 54.
Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.
Tilly *v.* American B. & L. Assn., 52 Fed. Rep., 618, 622.
Robertson *v.* Homestead Assn., 10 Md., 397; s. c., 69 Am. Dec., 145.
Thompson on Building Assns. (2d ed.), §§ 3, 4.

Such being the nature of the Eastern Building and Loan Association, the plaintiff in error, we direct attention to the following specific facts out of which this litigation arises:

11. Defendants in error, copartners under the firm name of Welling & Bonnoitt, being citizens and residents of the County of Darlington, State of

South Carolina, on January 28, 1891, made formal written application to the plaintiff in error for fifty shares of the regular instalment stock issued by plaintiff in error. In the formal application for shares, defendants in error agreed "to abide by all the terms, conditions and by-laws contained or referred to in the certificate of shares, and will also comply with all the rules and regulations of said association."

Transcript, pp. 46–47, Application for Shares.

12. At the time this application for stock was made to the plaintiff in error, Welling, one of the defendants in error, was the local agent of the association at Darlington, South Carolina, and as such was familiar with the nature of the corporation and its plan of operations.

Transcript, pp. 13, 14.

13. The application for shares was made through one Carpenter, the general agent of the plaintiff in error, who was at that time at Darlington, South Carolina, and was by him transmitted to the home office of the plaintiff in error at Syracuse, New York, for acceptance, and the issue of the certificate for the subscribed stock.

Transcript, pp. 10, 46, 47, 55, 56, deposition of C. A. Pooler.

14. The application for shares was received and accepted by plaintiff in error at its home office in Syracuse, New York, and a stock certificate issued there to the defendants in error as partners on February 2, 1891.

Transcript, pp. 47, 48, 49.

15. The stock certificate provides that "in consideration of the membership fee, together with agreements and statements contained in the application for membership in the association and full

compliance with the terms, conditions and by-laws printed on the front and back of the certificate, which are hereby referred to and made a part of this contract, the said Eastern Building and Loan Association of Syracuse, N. Y., agrees to pay said shareholders, or their heirs, executors, administrators or assigns, the sum of $100 for each of said shares at the end of seventy-eight months from the date thereof."

Transcript, p. 47.

Payments under the certificate "are payable at home office of the association at Syracuse, New York" (Transcript p. 47, side p. 88, "Certificate").

16. Further on in said certificate the following express provisions are set forth, to wit:

"This certificate of shares is issued to and accepted by the holder thereof upon the following express terms and conditions:

"*First.* The shareholder agrees to pay, or cause to be paid, a monthly instalment of seventy five cents on each share named in this contract, the same to be paid on or before the last Saturday of each month, *until such share matures or is withdrawn.* * * *

"*Sixth.* At stated periods the profits arising from interest, premiums, fines and other sources shall be apportioned among the shares in good standing.

"*Seventh.* All payments must be made to an authorized agent or sent to the Secretary at the home office by draft, express or money order or registered letter." * * *

"*Ninth.* The by-laws of this association, which are attached to and endorsed hereon are a part of this contract, and such by-laws and this certificate are to be construed together as part of the contract between the association and the shareholders. * * *

"*Fourteenth.* Any action brought against this association shall be commenced within six months after filing proof and *in the County of Onondaga and State of New York.*

"*Fifteenth.* No agent has authority to change this contract in any way, and the association assumes no obligation for any statements not contained in its printed literature."

Transcript, pp. 47–49.

17. The by-laws of the plaintiff in error were printed in full upon the certificate of stock issued to the defendants in error, and we direct the attention of this Court particularly to the following articles and sections of these by-laws, namely:

Art. XIV., § 1, Transcript, p. 32;
Art. XIV., §§ 13, 14, Transcript, p. 34;
Art. XIV., § 21, Transcript, p. 35;
Art. XV., §§ 1, 2, Transcript, p. 35.

18. And in this connection we also direct the attention of the Court to certain material provisions of Chapter 122, Laws of New York of 1851, under which plaintiff in error was incorporated.

Laws of New York, 1851, Chapter 122,
§§ 4, 7, 11, Transcript, pp. 67, 68, 69.

19. On or about the 6th day of April, 1891, defendants in error applied to plaintiff in error, at its home office in the City of Syracuse, New York, for a loan or advance of the par or maturity value of the shares subscribed for by them, to wit, the sum of $5,000, such application being made in writing in accordance with the rules and regulations and the by-laws of plaintiff in error.

Transcript, pp. 49, 50, Exhibit "G."

20. The application for a loan agrees to give a mortgage on the real estate described in the application itself, being the same property subsequently

mortgaged by defendants in error to plaintiff in error.

Transcript, p. 49, Exhibit "G."
Transcript, pp. 36, 37, Exhibit "C."

21. The said application for a loan or advance was submitted to the directors of plaintiff in error at the corporate *situs* at Syracuse, New York, and subject to the execution of the papers and the giving of the proper mortgage security, was granted by the said Board of Directors.

Transcript, pp. 56, 57, deposition C. A. Pooler.

22. The terms and conditions upon which the loan or advance to the defendants in error was to be made are fully set forth and shown in the deposition of C. A. Pooler.

Transcript, pp. 57, 58.

23. After defendants in error received notice that their application for a loan or advance had been granted, they then formally applied for the advance or payment of the money to them by a letter written on or about June 6, 1891, such letter appearing in the transcript as Exhibit "S," and being headed "Application for an Advance."

Transcript, pp. 65, 65.

24. The substance of this letter of application is as follows:

"Having obtained the preference for an advance on fifty shares * * * of your association at a premium of ten per cent., I now respectfully request the advance be granted. *I hereby agree to comply with the charter and by-laws of your association and all requirements defined by your committee of the Board of Directors.*"

Transcript, p. 65.

25. The defendants in error executed and delivered their notes and mortgage to the plaintiff in error, as appears from the transcript; such delivery of the notes and mortgage and the stock certificate assigned as collateral being made to plaintiff in error at Syracuse, New York, *concurrently* with the transmission of the letter of application last above quoted from.

Transcript, pp. 36-38, Mortgage; Transcript, p. 39, Notes; Transcript, pp. 62, 63, deposition D. A. Pierce.

26. Plaintiff in error then accepted the papers at Syracuse, advanced to defendants in error the sum of $5,000, less $500, the gross premium bid, and agreed to be paid by them as a preference for the loan so that they actually received from the plaintiff in error, in cash, the sum of $4,500, which, together with the $500 gross premium deducted, represented an advance to them of the full par or maturity value of their shares, such advance being made in strict accordance with the Articles of Incorporation and by-laws of the plaintiff in error.

Transcript, pp. 62, 63, Deposition, D. A. Pierce.

Transcript, p. 24, Articles of Incorporation, Art. X.

Transcript, pp. 32, 34, By-laws, Art. XIV., §§ 1, 13, 14.

Transcript, p. 35, By-laws, Art. XV., § 2.

27. The mortgage executed by the defendants in error to the plaintiff in error, while securing the payment of the 78 notes executed by the defendants in error and described in the mortgage, was in fact and in contemplation of law also a mortgage to secure the payment of dues or calls upon the stock subscribed for by defendants in error, and the par or maturity value of which was advanced to them by the plain-

tiff in error upon the pledge of the stock itself coupled with the security of the mortgaged real estate. The seventy-eight notes mentioned in the mortgage were an advance estimate of the amount that would have to be paid and the number of payments that would be required in order to mature the stock of the defendants in error, and through such maturity secure the cancellation of the mortgage and the discharge of the obligations of the defendants in error to the plaintiff in error, the stock to be likewise canceled at its maturity, so that the stock would then be set off against the advance made upon it, the premium and interest paid upon the advance going into the general funds of the corporation as a part of the corporate profits in which defendants in error, along with all other stockholders in plaintiff in error, were entitled to share and participate. The mortgage itself shows that this was the real understanding of the parties, and that they contracted with reference to the laws of New York and the articles of incorporation and by-laws of the plaintiff in error. This is clearly shown by a covenant in the mortgage which requires defendants in error to "*also keep and perform all promises and engagements made and entered into with said association according to the true intent and meaning of its by-laws and articles of association.*"

Transcript, p. 37, side page 68.

The defeasance clause in the mortgage was conditioned not merely upon the payment of the notes, but also upon the performance of the other covenants. It reads, "And this conveyance shall be void if full payment or the aforesaid moneys, both principal and interest, be made as hereinbefore specified, and *if the aforesaid covenants and each of them be well and truly kept and performed as herein specified and provided.*"

Transcript, p. 38; side p. 70.

28. That such was the contract and understanding of the parties is manifest from the amounts for which the several notes secured by the mortgage are drawn. The first seventy-~~five~~ notes are each for $79.20, the last three notes are each for $41.70 (Transcript, p. 39). Under their contract of membership and their stock subscription, defendants in error were required to pay monthly dues or calls on their fifty shares of stock, amounting to $37.50 (Transcript, p. 37, deposition C. A. Pooler), and under the laws of New York and articles of incorporation and by-laws of plaintiff in error these payments of monthly dues or calls were to continue until such time as the stock attained its par or maturity value; *first*, by reason of the sums paid in as dues or calls, and, *second*, from any profits apportioned to the stock; but, of course, if no profits were earned, payments of dues were required to be made until by such payments the stock became fully paid.

Transcript, pp. 68, 69, 71, Laws of New York (1851), Ch. 122, §§ 4, 7, 11, 20; also Laws of New York, Ch. 564, § 1, Transcript, pp. 71, 72.

Transcript, pp. 23, 24, 25, Articles of Incorporation, Arts. IX., X., XV.

29. In addition to the $37.50 dues or calls required to be paid by defendants in error until the maturity of their stock as above stated, they obligated themselves to pay, by way of monthly interest and premium upon the advance to them, the sum of $41.70, this monthly premium and interest payment when added to the monthly payment of dues, amounting, as will be readily seen, to $79.20, exactly representing the amount for which each of the first seventy-five notes was drawn. It will be noted that under the By-laws and Articles of Incorporation of plaintiff in error, defendants in error were required to be members and make payments of dues for three months before they could apply for and obtain an ad-

vance upon their shares (By-laws, Art. XV., § 2, Transcript, p. 35). Therefore, at the time the advance was made to defendants in error, they had made three monthly payments of $37.50 each by way of dues upon their stock subscription, and, as it was *estimated* when the advance was made and the mortgage executed that the stock would mature, and the advance be thereby repaid, in seventy-eight months from the date of the advance, defendants in error were only required by the terms of the mortgage and the notes executed thereunder to make payment of dues for seventy-five additional months, the last three notes out of the seventy-eight being for but $41.70 each (Transcript, p. 39) and representing only payments of premium and interest, which, according to the estimated date of maturity of stock would be all that would be required to be paid by the defendants in error on the assumption that the stock itself would have matured at the expiration of the seventy-eight months' period. This whole matter is clearly explained by the testimony of the witnesses Pooler and Pierce.

Deposition C. A. Pooler, Transcript, pp. 56, 57, 58, 59, 60.

Deposition D. A. Pierce, Transcript, pp. 61, 62, 63, 64.

30. The controversy between the defendants in error and the plaintiff in error in the State court of first instance, and in a more pronounced form in the Supreme Court of South Carolina, was whether the contract in question was governed by and to be construed under the laws of New York, and in accordance with the judicial decisions of that State, or whether it could be construed independently thereof, and according only to the language of the mortgage itself, without reference to the articles of incorporation and by-laws of the plaintiff in error and the laws and judicial decisions of the State of New York.

In this connection it was contended by the

defendants in error that the stock certificate and mortgage together stated a definite contract under which plaintiff in error had *guaranteed* the maturity of its stock, and the consequent discharge of the mortgage at the expiration of a period of seventy-eight months, and the insistence was that even if this contention was not in accordance with the laws of New York, yet it was in accordance with the laws of South Carolina, and, therefore, that it should be held that the mortgage had been fully paid and discharged and made subject to cancellation by the payment of seventy-five notes for $79.20 each and the payment or tender of payment of the last three notes of $41.70 each. In support of this contention defendants in error relied upon a pamphlet issued by plaintiff in error and which the defendants in error, as plaintiffs below, gave in evidence upon the trial. That pamphlet, marked Exhibit "D" and headed "The Definite Contract Plan," appears in full in the transcript (Transcript, pp. 39-46). As this pamphlet will doubtless be referred to and relied upon in this Court, we now direct attention to the following quotations therefrom:

"Q. What is the Eastern Building and Loan Association?

"A. It is in the nature of a co-operative bank *in which the members are equal partners, and the deposits are loaned only to the shareholders.*"

Transcript, p. 40, par. 74.

"Q. How often are the profits divided?

"A. Only when stock matures and reaches its par value.

"Q. *What is the meaning of stock maturity?*

"A. *When the amount deposited, together with accumulated profits amounts to $100 on each share.*

"Q. What amount is deposited monthly?

"Seventy-five cents per share."

Transcript, p. 40, par. 74

"Q. When will the shares reach their par value?

"A. Shares mature in exactly six and one-half years. * * *

"Q. What is the object of this Association?

"A. The main object is to assist each other in saving money and having what that amount earns."

Transcript, p. 41.

"PLAN. The capital stock of the Eastern Building and Loan Association is divided into shares of $100 each par value at maturity. Any person, male or female, may become a shareholder and may apply for two or more shares. All shares on which payments are made are regularly matured at the expiration of the seventy-eight months (6½ years) from date of certificate. * * *

"LOANS. The money accumulated in the loan fund is loaned to the first approved application from a member. Loans can be made only to members. All loans must be amply secured by first mortgage real estate security. Loans will only be made upon shares that are three months old, and in good standing. *For illustration*, suppose a party owns a town lot worth four hundred dollars or upwards, and after he becomes a shareholder desires to borrow one thousand dollars with which to build a home, and he has ten shares of one hundred dollars each, amounting to one thousand dollars. When the shares are three months old or more, he can make application for a loan on blanks furnished by the association, which he fills out, offering a first mortgage on his lot, and the improvements to be made thereon with the money so borrowed. If the association, through its directors, on inspecting his application, finds that the security offered is sufficient, and that all is as represented, and all the requirements have been complied with, his application will be approved, and he will be entitled to the next loan; but, should there be several ahead of him, he will take his regular turn, as all applications for loans are taken up in their regular order.

"All interest and premiums are payable monthly at the time of paying monthly instalments.

"This association has no auction system, whereby some members are inveigled into paying large premiums, but all members pay alike for money borrowed and take their regular turns in receiving loans.

"*Illustration.*

"Showing costs and profits to the investor of ten shares of $1,000 in six and one-half years, at time of maturity:

"He pays a membership fee of $1.00 per share	$10 00
"He pays monthly instalments of $7.50 per month for 78 months, $7.50 × 78	585 00
"Total amount invested	$595 00
"He receives in cash at maturity	1,000 00
"His net gain is	$405 00

"*Illustration.*

"Showing the cost of $1,000 loan on ten shares of stock for six and one-half years:

"He bids ten per cent. ($100), which is deducted from the $1,000 borrowed.

"He pays $15.84 per month for 78 months	$1,235 52
"He paid for stock	10 00
"Total	$1,245 52

"It will be seen from the above that $345.52 is the amount paid in excess of the actual amount received on loan. This for the use of the money for six and one-half years. Thus the borrower pays less than six per cent. per annum.

"He also pays $10 attorney's fees for examining title."

Transcript, pp. 42, 43.

31. Having consummated their "advance" in the manner stated, defendants in error paid the first seventy-five notes secured by the mortgage as they severally matured, each for the sum of $79.20.

Transcript, p. 7.

But did not pay the last three notes for $41.70 each, although it is admitted that they tendered payment of such notes which the plaintiff in error refused to receive, because such tender was made conditioned upon the release and discharge of the mortgage executed by defendants in error without regard to the fact that the stock had not matured, or been fully paid by defendants in error.

Transcript, pp. 7, 8, 14, 18, 19, 20, Dep. L. S. Welling.

Transcript, pp. 50-54, Exhibits H-R, inclusive.

32. The plaintiff in error refused to accept payment of the last three notes for $41.70 each, because those notes represented only the monthly premium and interest upon the "advance" to defendants in error, and did not include the payments of dues or calls upon their stock, and the stock not having matured in the estimated period of seventy-eight months, a continuance of the payments by way of dues was required by the express provisions of the laws of New York and the articles of incorporation and by-laws of plaintiff in error.

Laws of N. Y., 1851, Ch. 122, §7, Transcript, pp. 68, 69.

Laws of N. Y., 1875, Ch. 564, § 1, Transcript, pp. 71, 72.

Articles of Incorporation, Art. X., Tr., p. 24.

By-Laws, Art. XIV., §§ 13, 14, Transcript, p. 34.

That such payment of dues was an obligation assumed by the defendants in error at the time of the

advances to them, the mortgage itself clearly shows by binding the mortgagors to "keep and perform all promises and engagements made and entered into with said association according to the true intent and meaning of its by-laws and articles of association."

Transcript, p. 37, Mortgage; see also p. 38, par. 69.

33. The undisputed evidence shows that the stock of defendants in error had not matured nor been fully paid at the expiration of the seventy-eight months' period, nor had it matured when action was begun, as hereinafter shown, by defendants in error against plaintiff in error in the State courts of South Carolina.

Transcript, p. 58, Dep. C. A. Pooler, Ints. 46, 47, and answers.

That the stock had not matured, and, therefore, that the payments of dues or calls must continue until the maturity of the stock, plaintiff in error informed and advised defendants in error on August 28, 1897, by a letter fully and clearly stating the situation.

Transcript, p. 50, Exhibit "I."

And defendants in error were informed that payment of the last three notes for $41.70 could not be accepted by plaintiff in error as payment in full and the lien of the mortgage be released.

Transcript, p. 51, Exhibit "K," and subsequent correspondence, Exhibits "L"–"R," pp. 52–54.

But, on the contrary, they were advised that they must continue making payments of dues, interest and premium, amounting to $79.20 per month, until their stock should attain its maturity value of $100 per share, or $5,000 in the aggregate, at which

time the stock would be canceled and the mortgage released.

"Q. They advised you when you sought to pay those notes that they did not pay up what they claimed to be the amount of the balance of your indebtedness to the association?"

"Ans. That is what they claimed."

"Q. And they informed you that your shares of stock had not reached maturity or par value?

"Ans. Yes."

Transcript, p. 11, Ev. L. S. Welling.
Transcript, p. 50, Exhibit "I."
Transcript, p. 19, par. 33, Ev. L. S. Welling, Recross Ex.

Thereupon defendants in error made no further attempt to keep up their payments or mature their stock, but, on the contrary, refused to make any further payments of dues or calls upon their stock, defaulted in such payments and contented themselves with tendering payment of the three premium and interest notes for $41.70 each and demanding a release and discharge of their mortgage, which tender and demand plaintiff in error refused and declined to comply with.

Transcript, pp. 19, 20, Ev. L. S. Welling.
Transcript, pp. 52–54, Exhibits "L"-"R."

At the time when the defendants in error declined and refused to make further payments of dues or calls on their stock they had only made seventy-eight monthly payments of $37.50 each upon their stock subscription for fifty shares of the par value of $5,000, so their payments amounted in the aggregate to but $2,925, while the profits or dividends credited to their stock up to the time of action brought amounted to $199.50, so that the total book value of their stock at the time they demanded that it should be

treated as matured at its par value was $3,121.50, and not $5,000, its par or maturity value.

Transcript, pp. 58, 59, Dep. C. A. Pooler, Ints, 47-52 and answers.

In short, the business had not proven as profitable as had been estimated when the corporation was organized in 1890; its stock had not matured in seventy-eight months; and the association and its officers were without power or authority to mature stock except from earnings or to release shareholders from their obligations except in accordance with the Articles of Incorporation and by-laws and the laws of New York.

Laws of N. Y. 1851, Ch. 122, §§ 4, 7, 11, 20; Laws of N. Y. 1875, Ch. 564, § 1; Transcript, pp. 67, 68, 69, 71, 72.

Articles of Incorporation, Arts. X., XV., Transcript, pp. 24, 25.

By-Laws, Art. XIV., §§ 1, 3, 10, 13, 14, Transcript, pp. 32, 33, 34.

34. On this state of facts the action in this case was begun by the defendants in error, as plaintiffs, against the plaintiff in error, as defendant, in the Court of Common Pleas of Darlington County, South Carolina, on January 15, 1898.

Transcript, p. 2.

The nature and character of the action, and the *Federal questions* arising in connection therewith which give this Court jurisdiction, will be made apparent by the following *résumé* of the proceedings in the State courts.

35. In 1817 the Legislature of South Carolina enacted a statute, which ever since has been in force and effect, having been carried into all subsequent revisions of the statutes of that State, and being now embodied in the Revised Statutes of South Carolina of 1893, as Sections 1894 and 1895.

Said Sections are as follows:

"Sec. 1894. Any person who shall have received full payment or satisfaction, or to whom a legal tender shall have been made of his debt, damages, costs and charges, secured by mortgage of real estate, shall, at the request of the mortgagor, or of his legal representatives, or of any other person being a creditor of the said debtor or a purchaser under him, or having an interest in any estate bound by such mortgage, and on tender of the fees of office for entering such satisfaction within three months after such request made, enter satisfaction in the proper office on such mortgage, which shall forever thereafter discharge and satisfy the same.

"Sec. 1895. Any person having received such payment, satisfaction or tender as aforesaid who shall not, within three months, by himself or his attorney, after request and tender of fees of office repair to the said office and enter satisfaction as aforesaid, shall forfeit and pay the party aggrieved a sum of money not exceeding one-half of the amount of the debt secured by mortgage as aforesaid, to be recovered by action in any court of competent jurisdiction within the State; and on judgment being rendered for the plaintiff in such action, it shall be the duty of the presiding Judge to order satisfaction to be entered on the judgment or mortgage aforesaid by the Clerk or Register or other proper officer, whose duty it shall be, on receiving such order, to record same and to enter satisfaction accordingly."

36. Basing their right of action on these statutory provisions, defendants in error brought their action against plaintiff in error to recover the statutory penalty and to secure the release and discharge of record, in the manner provided by the statute, of the mortgage executed by defendants in error to plaintiff in error, the contention being that by the payment of the seventy-five notes for $79.20 each and the tender of payment of the last three notes for $41.70 each, the mortgage was discharged and the obligations secured by it fully paid.

Transcript, pp. 2-4, "Complaint."

37. To the complaint based on the theory and statutes just stated, plaintiff in error (as defend-

ant) interposed an answer wherein it plead its incorporation under the laws of New York and specifically plead and relied upon the laws of New York of 1851 and 1875, already frequently adverted to, its articles of incorporation and by-laws, and the judicial decisions of the State of New York construing the New York statutes in question.

Transcript, pp. 4-7; Answer, par. Fourth.

38. It will be noted that the complaint alleges the incorporation of plaintiff in error under the laws of New York as a building and loan association (Transcript, p. 2), and then particularly avers that the loan to defendants in error "*was made pursuant to the by-laws of the said defendant association.*"

Transcript, p. 3.

It is then alleged that the notes and mortgage have been fully paid "in accordance with the terms, stipulations and conditions of the said notes, mortgage, *and the by-laws* of said defendant association."

Transcript, p. 3.

Then the demand for a release of the mortgage, as "paid" within the meaning of the foregoing statutory provisions, is alleged, the refusal to release is shown, and judgment is demanded for the penalty imposed by the statute in the sum of $1,800, with costs.

Transcript, pp. 3, 4.

The answer of plaintiff in error (as defendant below) sets up not only the laws of New York but the true contract between the parties under those laws and the articles of incorporation and by-laws of plaintiff in error, denies that the obligations secured by the mortgage have been paid and sets up specifi-

cally the remaining and unpaid indebtedness of defendants in error to plaintiff in error.

Transcript, pp. 4, 5, 6; Answer, par. "Fourth."

39. On the issues thus joined the case went to trial and on the trial defendants in error as plaintiffs gave in evidence the articles of incorporation and by-laws of plaintiff in error (Transcript, p. 7), while plaintiff in error as defendant, gave in evidence the laws of New York of 1851 and 1875, and several opinions and decisions of the courts of New York, construing and applying such laws.

Transcript, pp. 62-64, Dep. D. A. Pierce; and pp. 66-67, Exhibit "V"; 78-85, Exhibit "W"; 85-87, Exhibit "X".

40 Upon the trial it was conceded and agreed that *no* question of *fact* was in dispute and: "The attorneys for the plaintiffs and defendant admit the same state of facts, *including the laws* of the State of New York * * * and agree as there is *no fact to be found by the jury*, that his Honor can direct a verdict for the plaintiff or defendant" as he construes the law. And each side requested instructions for a verdict.

Transcript, p. 90.

41. Counsel for plaintiff in error (the defendant) then directed the attention of the trial Judge to the laws of New York and the decisions of the New York courts given in evidence, and by a series of requests for directions to the jury, demanded "full faith and credit" for the laws of New York, and the enforcement of the contract between the parties in accordance with those laws and decisions.

Transcript, pp. 90-91.

42. Thereupon the trial Judge, absolutely ignoring the laws of New York and the provisions of the articles of incorporation and by-laws of the plantiff

in error, as well as the plain terms of the mortgage itself, held that the mortgage was paid and discharged, and that "as a matter of law the penalty attaches in favor of the plaintiffs as against defendant," and a verdict for plaintiffs (defendants in error) for $1,800 and costs was accordingly directed.

Transcript, pp. 93, 94.

43. To these rulings of the trial Court and the verdict found by direction of the Court, exceptions were duly taken in accordance with the practice in South Carolina and the case taken in regular course to the Supreme Court of South Carolina for review.

Transcript, pp. 93, 94, 95, 97.

44. The "exceptions" to the action of the trial Court were largely based upon the refusal of that Court to apply the laws of New York and several times definitely invoked those laws and demanded their application to the contract between the parties.

Transcript, pp. 93, 94; Exceptions, pars. 2, 3, 4, 9, 11.

45. After the case had reached the Supreme Court of South Carolina, and in accordance with what seems to be the practice in that State, counsel for defendants in error, as respondents in that Court, served and filed a notice of certain grounds upon which they intended to invoke an affirmance of the judgment below. One of those grounds was: "*Because these contracts should be construed and governed by the laws of South Carolina.*"

Transcript, p. 96; par. VIII.

46. On this state of the record, the case came on for hearing in the Supreme Court of South Carolina and the judgment of the Court below was affirmed upon the very ground stated in the preceding paragraph, and no other, the Supreme Court of South Carolina holding in an opinion, *which is a part of the record in this case*, that:

"*The agreement herein is, in our opinion, injurious to the interests of our people, and whatever may be the laws of New York, we do not think they should be enforced in this State.*"

Transcript, pp. 97, 100, 101.

47. In the opinion of the Supreme Court of South Carolina the Court recognizes the contention of plaintiff in error that the contracts and by-laws "are to be construed under the laws of New York" (Transcript, p. 100, side page 187), but denies the right of plaintiff in error to have them so construed, on the ground that: "This is not a right of either State. * * * There is no comity among the courts of the several States. * * * It is the duty of every State to look to the interests of its own subjects. * * * No State is bound to recognize or enforce contracts which are injurious to the welfare of its people or which are in violation of its own laws. * * * It thus appears that *this* State is not compelled *from mere comity* (?) to recognize the laws of New York for the reasons stated;" and so "full faith and credit" was directly denied to the laws of New York, and the judgment of the Court below was, *upon this express ground*, affirmed.

Transcript, pp. 100-101.

THE FEDERAL QUESTIONS INVOLVED.

48. Upon this state of the record, without more, we submit that three and perhaps four *federal questions* clearly appear, namely:

(*a.*) Full faith and credit was claimed for the laws of New York and such faith and credit expressly denied.

(*b.*) The "equal protection" of the laws was denied to plaintiff in error in contravention of the XIVth. Amendment to the Constitution of the United States.

(*c.*) Plaintiff in error was deprived of its property without "due process of law," and,

(*d.*) The Supreme Court of South Carolina by its decision overturned *the settled construction* of §§ 1894 and 1895 of the Revised Statutes of South Carolina of 1893 (Acts of 1817), and thereby impaired the obligations of a contract in violation of the Constitution of the United States.

49. Nor can it be claimed for a moment that the Supreme Court of South Carolina did not fully understand such to be the meaning and effect of its own decision as its action upon the "petition for a rehearing" shows.

The opinion of the Court was handed down November 28, 1899 (Transcript, p. 97, side p. 183).

Shortly thereafter a petition for a rehearing was filed which appears in the record and is certified to be a part thereof.

Transcript, pp. 101-108; also p. 108, side page 204, Clerk's certificate.

This petition for a rehearing distinctly raised all the Federal questions above stated and presented to the attention of the Supreme Court of South Carolina the fact that by its decision it had expressly denied the rule of constitutional obligation requiring full faith and credit to be given by it to the laws and judicial decisions of the State of New York.

Petition for Rehearing, Transcript, pp. 102, 103, par. IV.; p. 104, par. V.; p. 104, pars. VI., VII.; p. 105, pars. VIII., IX., X; p. 106, par. XIII.; p. 107, par. XV.

The Supreme Court of South Carolina denied its jurisdiction to entertain the petition for a rehearing, but, in disposing of the matter, significantly said:

"*We may add, however, that even if we had jurisdiction to consider and determine these questions we do not think there would be any ground for a rehearing.*"

Transcript, p. 108.

50. We are familiar with the doctrine laid down by this Court that a Federal question cannot be raised for the *first* time in the State court by a petition for a rehearing, but we do not think that rule has any application here, because the Federal questions were *previously* raised "by necessary implication" on the face of the record, as we have clearly shown (*ante*, pp. 22-24).

What we do insist upon is that the petition for a rehearing forcibly urged upon the Supreme Court of South Carolina its duty to reconsider its denial of several constitutional rights to the plaintiff in error, and that thereupon that Court deliberately reaffirmed the correctness of its opinion, leaving no doubt that its intention was to deny "full faith and credit to the laws of New York" upon the mistaken theory that no constitutional obligation, but only one of mere interstate comity, which it was at liberty to ignore, required it to apply the laws of New York to the construction of a New York contract made by a New York corporation.

51. On the record thus shown a writ of error was granted by MR. CHIEF JUSTICE FULLER, to remove this case to this Court, and it is now here for review and final determination on its merits.

Transcript, pp. 115-116.

Wherefore, the plaintiff in error by its counsel assigns errors as follows:

Assignment of Errors.

"Comes now the Eastern Building and Loan Association of Syracuse, New York, plaintiff in error, by its counsel, and respectfully represents that it feels itself aggrieved by the proceedings and judgment of the Supreme Court of South Carolina in the above entitled cause and assigns error thereto as follows:

"1. The Supreme Court of South Carolina erred in refusing to give full faith and credit to the pub-

lic acts, records and judicial decisions of the State of New York plead and given in evidence by the plaintiff in error and in denying the rule of constitutional obligation established by Section 1 of Article IV. of the Constitution of the United States and Section 905 of the Revised Statutes of the United States.

"2. The Supreme Court of South Carolina erred in its construction of the contract obligations between plaintiff in error and defendants in error, in this: That by its refusal to consider and pass upon the contract obligations of defendants in error to plaintiff in error entered into in the State of New York under the laws of that State, it impaired the obligation of a contract between the parties, refused full faith and credit to the public acts, records and judicial proceedings of the State of New York, and deprived defendant of its property without due process of law.

"3. The Supreme Court of South Carolina erred in the application to the plaintiff in error (defendant below) of Sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, and erred in changing the settled construction of said statutory provisions, whereby it impaired the obligation of the contract between defendants in error and the plaintiff in error, denied the plaintiff in error the equal protection of the laws of South Carolina and deprived it of its property without due process of law.

"4. The Supreme Court of South Carolina erred in holding that the laws of New York were not binding upon the courts of South Carolina and did not enter into, govern and control the construction of the mortgage executed by defendants in error to plaintiff in error, so far as the obligations of defendants in error as members of and stockholders in plaintiff in error are concerned, and by such holding and decision the Court erred in refusing full faith

and credit to the public acts, records and judicial proceedings of the State of New York, and impaired the obligation of the contract between defendants in error and plaintiff in error.

"5. The Supreme Court of South Carolina erred in holding that the mortgage executed by defendants in error to plaintiff in error was discharged and paid, and that the plaintiff in error was subject to the penalty provided by Sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, because such holding and decision rest solely upon the refusal of said Court to give full faith and credit to the public acts, records and judicial proceedings of the State of New York, and had the effect of changing the settled construction of said statutory provisions so as to impair the obligation of the contract between the defendants in error and the plaintiff in error, and apply such statutory provisions to a mortgage not discharged or paid, and to a case not contemplated by the words of the statute and not within the scope and meaning of the prior decisions of the Supreme Court of South Carolina, interpreting and applying said statutory provisions.

"6. The Supreme Court of South Carolina erred in changing the settled construction of Sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, and in applying them to a case where the payment and discharge of a mortgage was controverted and denied by the mortgagee, and in which the mortgage itself was only an element or incident to the contract obligations existing between the defendants in error and the plaintiff in error, such contract obligations arising under and being controlled by the public acts, laws and judicial decisions of the State of New York.

"7. The Supreme Court of South Carolina erred in refusing to give full faith and credit to the public acts, records and judicial proceedings of the State of New York and to the contract entered into between

plaintiff in error and defendant in error in the State of New York, and under and pursuant to the laws thereof, and by its decision, opinion and judgment in said case the Supreme Court of South Carolina, in contravention of the Constitution of the United States, impairs the obligation of the contract between plaintiff in error and defendants in error, and said decision, opinion and judgment of the Supreme Court of South Carolina are erroneous in this, that they establish a rule of law impairing the obligation of contracts and depriving plaintiff in error of its property without due process of law.

"8. The Supreme Court of South Carolina erred in holding and deciding that 'whatever may be the laws of New York, we do not think they should be enforced in this State.'

9. The Supreme Court of South Carolina erred in affirming the judgment of the Court of Common Pleas for the County of Darlington, because the effect of such affirmance was to deprive plaintiff in error of its property without due process of law, deny to it the equal protection of the laws, deny full faith and credit to the laws and judicial proceedings of the State of New York, and abrogate the contract obligations of defendants in error to plaintiff in error in violation of the Constitution of the United States, and, particularly of the XIVth Amendment thereto.

"Wherefore the said Eastern Building and Loan Association, plaintiff in error, prays this Honorable Court to examine and correct the errors assigned, and for a reversal of the judgment of the Supreme Court of South Carolina entered in the said case of Lawrence S. Welling and Marion Bonnoitt, plaintiffs, respondents, against Eastern Building and Loan Association of Syracuse, N. Y., defendant, appellant, as aforesaid."

Transcript, pp. 113–115.

BRIEF.

I.

THE SUPREME COURT OF SOUTH CAROLINA DENIED "FULL FAITH AND CREDIT" TO THE LAWS OF NEW YORK BY REFUSING TO CONSTRUE THE CONTRACT OBLIGATIONS OF DEFENDANTS IN ERROR WITH PLAINTIFF IN ERROR, IN ACCORDANCE WITH THE CORPORATE CHARTER AND BY-LAWS OF THE EASTERN BUILDING AND LOAN ASSOCIATION AND THE STATUTES AND JUDICIAL DECISIONS OF NEW YORK.

By the provisions of Article IV., § 1 of the Constitution of the United States "a rule of comity becomes a rule of constitutional obligation."

Cooley's Const. Law (3d Ed.), 203.

And proof being made of the statutes of a sister State governing a contract made and performable in such State, the same construction and effect must be given to such statutes in the construction of the contract as would be given them by the courts of the sister State.

Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615, 622.
Mills *v.* Duryee, 7 Cr., 481, 484.
Hanley *v.* Donoghue, 116 U. S., 1, 3.

"It does not seem to have occurred to the Chief Justice (Mr. Chief Justice Taney) that the writ could be maintained upon the ground of a denial of full faith and credit to the Mississippi statute by the construction given by the Louisiana Court."

Glenn *v.* Garth, 147 U. S., 360, 369, per Fuller, Chief Justice.

The laws of New York of 1851 and 1875, and the Corporate Charter and by laws, as well as the decisions of the Courts of New York, construing the same, having been proved as facts in the case at bar the constitutional duty of the Supreme Court of South Carolina, was to construe the obligations of defendants in error, as members of the New York corporation, in accordance with the laws and decisions of New York.

Lloyd *v.* Matthews, 155 U. S., 222.
Allgeyer *v.* Louisiana, 165 U. S., 578, 589.

It may be contended that in this case the Supreme Court of South Carolina "construed" the New York statutes but did not "deny their validity."

Lloyd *v.* Matthews, 155 U. S., 222.
Glenn *v.* Garth, 147 U. S., 360.
Banholzer *v.* New York Life Ins. Co., 178 U. S., 406.

It will be noted that in the cases of *Glenn* v. *Garth*, and *Lloyd* v. *Matthews*, the State statutes were not proved as facts while in the *Banholzer* case "*the parties mutually agreed* that this should be a New York contract and construed according to the laws of that State" (178 U. S., 406, 407). Hence in none of these cases did the question arise as to the duty of a State court to construe the statutes of another State *proven as facts*, in accordance with the unequivocal language of the statutes themselves and the plain meaning of the decisions of the Courts of the sister State construing such statutes.

The case at bar presents this question and calls for its decision by this Court, the Supreme Court of South Carolina in fact denying validity to the laws and decisions of New York by saying: "Whatever may be the laws of New York we do not think they should be enforced in this State."

Ante, pp. 23 and 24; Transcript, pp. 37, 100, 101.

The contract relations between plaintiff in error and defendants in error arising out of the *status* of defendants in error as stockholders in plaintiff in error, the corporate charter, by-laws and the statutes of New York enter into and form a part of the contract between plaintiff in error and defendants in error, and the contract being a New York contract, performable in that State, any construction thereof which subjects it to the provisions of §§ 1894 and 1895 of the Revised Statutes of South Carolina of 1893, necessarily refuses "full faith and credit" to the laws of New York, *unless it gives to the corporate charter and by-laws, and the statutes of New York the same construction, meaning and effect given to them by the courts of New York.*

Canada So. R. Co. *v.* Gebhard, 109 U. S., 527, 537.

Relfe *v.* Rundle, 103 U. S., 222, 225, 226.

Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615, 622.

Englehardt *v.* Fifth Ward Loan Assn., 148 N. Y., 281, 285.

Ware *v.* Bankers' Loan & Ins. Co., 95 Va., 680; s. c., 64 Am. St. Rep., 826.

Sulz *v.* Mutual Reserve Fund Life Assn., 145 N. Y., 563, 568, Opinion per Peckham, *J.*

Clark *v.* Mut. Reserve Fund Life Assn. (D. C.), 43 L. R. A., 390, 395.

Campbell *v.* Eastern B. & L. Assn. (Va.), 37 So. E. Rep., 350.

Eastern B. & L. Assn. *v.* Snyder (Va.), 37 S. E. Rep., 298.

Eastern B. & L. Assn. *v.* Bedford, 88 Fed. Rep. 7 (now pending in this Court).

Washington Cent. Bk. *v.* Humes, 128 U. S., 195, 197, 206.

Coghlan *v.* So. Car. R. Co., 142 U. S., 101, 109.

II.

THE SUPREME COURT OF SOUTH CAROLINA, BY ITS DECISION, DENIED TO PLAINTIFF IN ERROR THE "EQUAL PROTECTION OF THE LAWS" IN CONTRAVENTION OF THE XIVTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, BECAUSE BY SUCH DECISION IT REFUSED TO ENFORCE A CONTRACT MADE IN THE STATE OF NEW YORK, PERFORMABLE IN NEW YORK AND VALID UNDER THE LAWS OF NEW YORK, RESTING SUCH REFUSAL UPON THE EXPRESS GROUND THAT THE COURTS OF SOUTH CAROLINA ARE NOT REQUIRED TO GIVE EFFECT TO THE STATUTES OF ANOTHER STATE FORMING A PART OF SUCH CONTRACT, IF THEY DEEM SUCH STATUTES INJURIOUS TO CITIZENS OF SOUTH CAROLINA, PARTIES TO THE CONTRACT.

Allgeyer *v.* Louisiana, 165 U. S., 578.
Holden *v.* Hardy, 169 U. S., 366, 391.
Gibson *v.* Mississippi, 162 U. S., 565, 582, 583.
Ex parte Virginia, 100 U. S., 339, 346, 347.

The essential features of the contract obligations of defendants in error with plaintiff in error are embodied in the articles of incorporation and by-laws of the plaintiff in error, and the notes and mortgage executed by the defendants in error were a mere incident to the performance by defendants in error of their obligations as "advanced" stockholders.

House *v.* Eastern B. & L. Assn., 52 App. Div. (N. Y.), 163.
O'Malley *v.* People's Assn., 92 Hun (N. Y.), 572.
Miller *v.* Eastern B. & L. Assn. (Tenn.), 53 S. W. Rep., 231.

Heslin *v.* Eastern B. & L. Assn., 28 Misc. (N. Y.), 376, 378.
Ware *v.* Banker's Loan & In. Co., 95 Va., 680; s. c., 64 Am. St. Rep., 826.
Bennett *v.* Eastern B. & L. Assn., 177 Pa. St., 233; s. c., 55 Am. St. Rep., 723.
Campbell *v.* Eastern B. & L. Assn. (Va.), 87 S. E. Rep., 350.
Eastern B. & L. Assn. *v.* Snyder, 37 S. E. Rep., 298.
London Assurance *v.* Companhia De Moagens, 167 U. S., 149, 161.
Burckle *v.* Eckhart, 3 N. Y., 132, 135.

III.

THE SUPREME COURT OF SOUTH CAROLINA, BY ITS DECISION, NULLIFIED THE CONTRACT OBLIGATIONS OF THE PARTIES, RELEASED DEFENDANTS IN ERROR FROM THEIR INDEBTEDNESS TO PLAINTIFF IN ERROR, CONFISCATED THE BALANCE OF INDEBTEDNESS SECURED BY THE MORTGAGE IN QUESTION, RELEASED THE LIEN OF SAID MORTGAGE AND REQUIRED PLAINTIFF IN ERROR TO PAY TO DEFENDANTS IN ERROR, BY WAY OF PENALTY, THE SUM OF $1,800, THEREBY DEPRIVING PLAINTIFF IN ERROR OF ITS PROPERTY WITHOUT "DUE PROCESS OF LAW" IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES AND THE XIVTH AMENDMENT THERETO.

"It has never been denied, nor is it now, that the Supreme Court of the United States has an appellate power to revise the judgment of the Supreme Court of a State, whenever such a court shall ad-

judge that not to be a contract which has been alleged, in the forms of legal proceedings, by a litigant, to be one, within the meaning of that clause of the Constitution of the United States which inhibits the States from passing any law impairing the obligation of contracts. Of what use would the appellate power be to the litigant who feels himself aggrieved by some particular State legislation, if this Court could not decide, independently of all adjudication by the Supreme Court of a State, whether or not the phraseology of the instrument in controversy was expressive of a contract and within the protection of the Constitution of the United States, and that its obligation should be enforced, notwithstanding a contrary conclusion by the Supreme Court of a State? It never was intended, and cannot be sustained by any course of reasoning, that this Court should, or could, with fidelity to the Constitution of the United States, follow the construction of the Supreme Court of a State in such a matter, when it entertained a different opinion."

Jefferson Branch Bank *v.* Skelly, 1 Black, 436, 443.

McCullough *v.* Virginia, 172 U. S., 102, 109.

This Court when called upon to interpret a contract made under the laws of a State looks first to the decisions of the courts of such State in determining the meaning and construction of the laws under which the contract was made.

Sioux City R. Co. *v.* North American Trust Co., 173 U. S., 99, 100.

In like manner the courts of every State are required by the Constitution to give full faith and credit to such laws and decisions, if properly given in evidence, when construing a contract entered into and to be performed in a sister State.

Chicago &c., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615.

And the right of the parties to contract under and subject to the laws of New York neither the legislature nor the courts of South Carolina can abridge or deny.

R. S. U. S., § 1977.
Yick Wo *v.* Hopkins, 118 U. S., 356, 369.
Santa Clara Co. *v.* Southern Pacific R. Co., 118 U. S., 394, 396.

The contract of membership of defendants in error with plaintiff in error, being a contract made and to be performed in the State of New York, must not only be construed in accordance with the laws of New York, but the Courts of South Carolina are forbidden by the XIVth amendment to the Constitution of the United States to deny to plaintiff in error the "equal protection of the laws" by refusing to enforce it in that State in accordance with the laws of New York.

Allgeyer *v.* Louisiana, 165 U. S., 578.
Holden *v.* Hardy, 169 U. S., 366, 391.

And any failure to so enforce the contract is a denial of "full faith and credit" to the laws of New York.

Huntington *v.* Attrill, 146 U. S., 657, 666.

It should not be overlooked that this litigation, instead of being instituted in the jurisdiction of the corporate situs, as it should have been [Clark *v.* Mutual Reserve Fund Life Assn. (D. C.), 43 L. R. A., 390, 397; Taylor *v.* Mutual Reserve Fund Life Assn. (Va.), 45 L. R. A., 149; Leary *v.* Columbia River, &c., Co., 82 Fed. Rep., 775; Sidway *v.* Missouri Land, &c., Co., 101 Fed. Rep., 481; Republican Mountain Silver Mines *v.* Brown, 58 Fed. Rep., 644], was begun in South Carolina by defendants in error *seeking affirmative relief*, and prosecuted to judgment there upon the principle that the courts of South Carolina were not bound to enforce contracts

made and performable in New York, in accordance with New York laws, but could enforce the New York law so far as it was advantageous to defendants in error, and deny the application of plain, unequivocal, statutory provisions of New York when adverse to their interests. This may be "due process of law," but if so it is neither justice nor honesty, nor does it accord to plaintiff in error the "equal protection" of the laws which the XIVth amendment guarantees.

The contention of defendants in error is in effect that this contract with the plaintiff in error is not embodied in the stock certificate, articles of incorporation and by-laws, taken together, but is limited to the provisions of the stock certificate and mortgage and that there is in fact no such contract as that claimed by plaintiff in error; and the courts of South Carolina, by ignoring the provisions of the New York statutes and of the articles of association and by-laws and the decisions of the New York courts, virtually sustain this contention.

"We have often had occasion to say that this Court, when reviewing the final judgment of a State Court upholding a State enactment alleged to be in violation of the contract clause of the Constitution, possesses paramount authority to determine for itself the existence or the non-existence of the contract set up, and whether its obligation has been impaired by the State enactment."

Chicago, &c., R. *v.* Nebraska, 170 U. S., 57, 68.

Von Hoffman *v.* Quincy, 4 Wall., 535, 550.

If this Court thus protects a contract against State legislation under the contract clause of the Federal Constitution, will it not protect a contract against the decision of a State court which refuses full faith and credit to the laws of a sister State and abrogates a contract upon the pretense of construing

it? Repudiation and confiscation are not "construction" and "interpretation."

See Western Mass., &c., Ins. Co. *v.* Hilton, 42 App. Div. (N. Y.), 52, 58, 59.
Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 108 U. S., 18, 22.
Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 119 U. S. 615.

The decision of the Supreme Court of South Carolina in the case at bar denies to plaintiff in error all remedies upon its contract with defendants in error as stockholders and refuses to hold them to their obligations as such. No State can so deny the enforcement within its jurisdiction of valid contracts under the laws of a sister State.

Edwards *v.* Kearzey, 96 U. S., 595, 600, 601.
The Homestead Cases, 22 Gratt. (Va.), 266; s. c., 12 Am. Rep., 507, 514, 515.
White *v.* Hart, 13 Wall., 646, 654.
Cæsar *v.* Capell, 83 Fed. Rep., 403.
Eastern Building and Loan Association *v.* Bedford, 88 Fed. Rep., 7.
Allgeyer *v.* Louisiana, 165 U. S., 578.

It also seems to us that the decision of the Supreme Court of South Carolina deprives plaintiff in error of its liberty to contract and of its property without "due process of law."

The effect of the decision is to require plaintiff in error, in violation of the statutes of New York and the provisions of its charter and by-laws, to pay defendants in error a sum of money for each share of stock held by them, largely in excess of payments made by them upon the stock, plus their *pro rata* share of the profits of the corporation (*ante*, p. 28). This certainly deprives the corporation of its property

and interferes with its liberty of contract. But does it do so without "due process of law"?

"This Court has never attempted to define with precision the words 'due process of law.'"

Holden *v.* Hardy, 169 U. S., 366, 389.

But the constitutional restriction undoubtedly applies to the *judicial* as well as to the executive and legislative powers of a State.

Murray's Lessees *v.* Hoboken Land Co., 18 How., 272, 276.

Hence, we submit that a state court cannot by *judicial legislation* abrogate a contract valid in another State, entered into under the laws of that State and performable in such other State, without violating that clause of the XIVth amendment to the Constitution of the United States, which provides that no State "shall * * * deprive any person of life, liberty or property without due process of law."

Holden *v.* Hardy, 169 U. S., 366, 390, 391.

Allgeyer *v.* Louisiana, 165 U. S., 578.

"For 'upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them;' and 'if they fail therein, and withhold or deny rights, privileges or immunities secured by the Constitution and laws of the United States, the party aggrieved may bring the case from the highest court of the State in which the question could be decided to this Court for final and conclusive determination.'"

In re Wood, 140 U. S., 278, 286.
Robb *v.* Connolly, 111 U. S., 624, 637.
Neal *v.* Delaware, 103 U. S., 370, 386, 387.

We are aware that it has been held by this Court that only State statutes, not judicial decisions, impair the obligation of a contract within the meaning of § 10, Art. I. of the Constitution of the United States.

New Orleans Water Works Co. *v.* Louisiana Sugar Co., 125 U. S., 18, 30.

Knox *v.* Exchange Bank, 12 Wall., 379, 383.

But notwithstanding these decisions we direct attention to the opinions of the Supreme Court of South Carolina in the case at bar and in the Ebaugh case (Transcript, p. 97; 36 S. E. Rep., 535), as virtually "Laws" of South Carolina made subsequent to the contract between the parties and beyond question impairing the obligation of the contract.

Why such a "law" is not within the meaning of the constitutional provision in a case like this seems by no means clear. At any rate, the decision in the case at bar did deny the equal protection of the laws to plaintiff in error, and did refuse full faith and credit to the laws of New York.

It would certainly be anomalous to hold that a contract made and to be performed in New York and valid under the laws of New York could be impaired as to its obligation by the Supreme Court of South Carolina, at the suit of a party resident in that State, in violation of the plain terms of the contract and of the laws of New York, without the denial of full faith and credit to the laws of New York. Yet such is the effect of the contention of counsel for defendant in error in this case.

IV.

THE SUPREME COURT OF SOUTH CAROLINA, BY ITS DECISION, CHANGED THE SETTLED CONSTRUCTION OF SECTIONS 1894 AND 1895 OF THE REVISED STATUTES OF SOUTH CAROLINA OF 1893, AND THEREBY IMPAIRED THE OBLIGATION OF THE CONTRACT BETWEEN PLAINTIFF IN ERROR AND DEFENDANTS IN ERROR IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES.

Prior to the opinion, decision and judgment of the Supreme Court of South Carolina in this case the settled, uniform and unvarying construction of sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893 by the Supreme Court of South Carolina had been and was that the same were only applicable in and to cases where a mortgage of real estate had been actually paid and satisfied, or there had been a full, true, complete and legal tender of the debt, damages, costs and charges secured by such mortgage, and that said settled construction of said statutory provisions is evidenced by prior decisions and judgments of the Supreme Court of South Carolina, to some of which special reference is made. In the case of *Lynch* v. *Hancock*, 14 S. C., 66, 89 (decided in 1880), after quoting the sections of the statute in question, *McIver, J.*, delivering the opinion of the Court, says:

"It will be observed that this provision applies only where full payment or satisfaction *of the debt* secured by the mortgage has been made, or where there has been a legal tender *of such debt*, and to extend it to anything else would be an unwarrantable addition to the terms of the statute."

See also--

Kaphan *v.* Ryan (1882), 16 S. C., 352.

In the case at bar "*the debt*" secured by the mortgage consisted of the obligations assumed by defendants in error as stockholders in plaintiff in error under the laws of New York.

Ante pp. 9-12, 16-19.

"We shall never immolate truth, justice and the law because a State tribunal has erected the altar and decreed the sacrifice."

Gelpcke *v.* Dubuque, 1 Wall., 206.
Township of Pine Grove *v.* Talcott, 19 Wall., 677.

And where a contract was valid under the laws and statutes of a State as construed when the contract was entered into, no subsequent change of law or decision will be permitted to invalidate it.

Olcott *v.* Supervisors, 16 Wall., 690.
Douglass *v.* County of Pike, 101 U. S., 677.
Burgess *v.* Seligman, 107 U. S., 20, 33.
Pleasant Township *v.* Ætna Life Ins. Co., 138 U. S., 67, 73.

V.

UNDER THE LAWS OF NEW YORK, THE PAYMENT OF THE SEVENTY-EIGHT NOTES NAMED IN THE MORTGAGE DID NOT HAVE THE EFFECT OF RELEASING THE LIEN OF AND DISCHARGING THE MORTGAGE EXECUTED BY THE DEFENDANTS IN ERROR, SUCH MORTGAGE BEING EXPRESSLY GIVEN TO SECURE THE PERFORMANCE "OF ALL PROMISES AND ENGAGEMENTS MADE AND ENTERED INTO WITH SAID ASSOCIATION, ACCORDING TO THE TRUE INTENT AND MEANING OF ITS BY-LAWS AND ARTICLES OF ASSOCIATION," AND THEREFORE SUCH

MORTGAGE WAS NOT SUBJECT TO THE PROVISIONS OF SECTIONS 1894 AND 1895 OF THE REVISED STATUTES OF SOUTH CAROLINA OF 1893 AT THE TIME OF THE INSTITUTION OF THIS ACTION UNDER THOSE SECTIONS BY THE DEFENDANTS IN ERROR.

House *v.* Eastern B. & L. Assn., 52 App. Div. (N. Y.), 163.
O'Malley *v.* People's Assn., 92 Hun (N. Y.), 572.
Campbell *v.* Eastern B. & L. Assn. (Va.), 37 S. E. Rep., 350.
Eastern B. & L. Assn. *v.* Snyder (Va.), 37 S. E. Rep., 298.
Heslin *v.* Eastern B. & L. Assn., 28 Misc. (N.Y.), 376.
Province *v.* Inter-State B. & L. Assn. (Tenn.), 58 S. W. Rep., 265.
People's B. & L. Assn. *v.* Morris (Ark.), 56 S. W. Rep., 266.
Royal Trust Co. *v.* Culver, 87 Ill. App., 630.
Cantwell *v.* Stockmen's B. & L. Assn, 88 Ill. App., 247.
Miller *v.* Eastern B. & L. Assn. (Tenn.), 53 S. W. Rep., 231.

VI.

UNDER THE LAWS OF NEW YORK, PLAINTIFF IN ERROR IS A PURELY MUTUAL CORPORATION, WHOSE STOCKHOLDERS HAVE EQUAL, MUTUAL AND RECIPROCAL RIGHTS, DUTIES AND OBLIGATIONS, AND NO ONE

OF WHOM CAN LEGALLY BE ACCORDED, IN THE STATE OF NEW YORK, ANY ADVANTAGE, PREFERENCE OR PRIORITY OVER ANOTHER.

Ch. 122, Laws of N. Y., 1851, and Ch. 564, Laws of 1875, Transcript, pp., 67–74.

Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.

People *v.* Lowe, 117 N. Y., 175, 180.

Tindall, *C. J.*, in Silver *v.* Barnes, 6 Bing., N. C., 180; 8 Scott, 300; 37 Eng. Com. L., 335.

Robertson *v.* Homestead Assn., 10 Md., 397; s. c., 69 Am. Dec., 145.

Tilley *v.* Am. B. & L. Assn., 52 Fed. Rep., 618, 622.

Thompson on Building Associations (2d Ed.), §§ 3, 4.

"A mutual savings fund and loan association is purely a co-operative society, consisting of a partnership in the profits of money as a money maker, equitably distributed in proportion to the severalties of capital furnished by the individual members thereof."

Wrigley on Building Associations, p. 16.

It surely must follow that the courts of South Carolina cannot by refusing to give "full faith and credit" to the laws of New York accord a preference to members of plaintiff in error resident in South Carolina.

VII.

THE ARTICLES OF INCORPORATION AND BY-LAWS OF PLAINTIFF IN ERROR, AND THE PROVISIONS OF CHAPTER 122 OF THE NEW YORK LAWS OF 1851, AND CHAPTER 564 OF THE NEW YORK LAWS OF 1875, ARE THE TEST OF THE RIGHTS AND OBLIGATIONS OF THE STOCKHOLDERS OF THE ASSOCIATION, AND BY THEM THE CONTRACT OF MEMBERSHIP MUST BE CONSTRUED, NOT ONLY IN NEW YORK BUT IN EVERY STATE OF THE UNION WHERE THE COURTS MAY BE CALLED UPON TO INTERPRET THE CONTRACT OF MEMBERSHIP.

Const. U. S., Art. IV., § 1.
Relfe *v.* Rundle, 103 U. S., 222, 225, 226.
Canada So. Ry. *v.* Gebhard, 109 U. S., 527, 537.
Chase *v.* Curtis, 113 U. S., 452, 458.
Young *v.* Wempe, 46 Fed. Rep., 354.
3 Thomp. on Corp., § 3046.

And so it has been held by the courts of several States with reference to membership contracts between plaintiff in error and its stockholders.

Bennett *v.* Eastern B. & L. Assn., 177 Pa. St., 233; s. c., 55 Am. St. Rep., 723.
Eastern B. & L. Assn. *v.* Snyder (Va.), 37 S. E. Rep., 298.
Campbell *v.* Eastern B. & L. Assn. (Va.), 37 S. E. Rep., 350.
Miller *v.* Eastern B. & L. Assn. (Tenn.), 53 S. W. Rep., 231.

In the case of Bedford *v.* Eastern Building and Loan Association, now awaiting decision in this Court, we have so recently fully reviewed in our

brief and upon oral argument the terms and provisions of the laws of New York and the provisions of the articles of association and by-laws of plaintiff in error that we do not deem it necessary to restate them at length in this connection. The contracts in this case and in the Bedford case are substantially identical and both, we think, must be regarded as New York contracts performable in that State and governed by the laws of New York.

Eastern B. & L. Assn. *v.* Bedford, 88 Fed. Rep., 7.

VIII.

UNDER THE LAWS OF NEW YORK, AND THE ARTICLES OF ASSOCIATION AND BY-LAWS OF PLAINTIFF IN ERROR, DEFENDANTS IN ERROR COULD NOT, IN THE STATE OF NEW YORK, MAINTAIN AN ACTION OR RECOVER UPON THEIR STOCK CERTIFICATE THE PAR OR MATURITY VALUE THEREOF IN ADVANCE OF THE ACTUAL MATURITY OF THE STOCK, NOR COULD THEY, EITHER AT LAW OR IN EQUITY, TREAT THEIR MORTGAGE AS DISCHARGED AND SECURE THE CANCELLATION THEREOF. HENCE THE DECISION OF THE SUPREME COURT OF SOUTH CAROLINA IN THIS CASE DENIED "FULL FAITH AND CREDIT" TO THE LAWS OF NEW YORK, DEPRIVED PLAINTIFF IN ERROR OF ITS PROPERTY WITHOUT "DUE PROCESS OF LAW," AND DENIED TO IT THE "EQUAL PROTECTION" OF THE LAWS.

Heslin *v.* Eastern B. & L. Assn., 28 Misc. (N. Y.), 578.

O'Malley *v.* People's Assn., 92 Hun (N. Y.), 572.

House *v.* Eastern B. & L. Assn., 52 App. Div. (N. Y.), 163.
People *v.* Lowe, 117 N. Y., 175.
Eastern B. & L. Assn. *v.* Snyder, *supra.*
Campbell *v.* Eastern B. & L. Assn., *supra.*

Manifestly the stock of plaintiff in error can only mature either by continued payment of the monthly dues of seventy-five cents per share until the stock has been fully paid to its par value or by such payments, plus an apportionment of profits from earnings.

Ante pp. 6, 7, 13.
Laws of N. Y., 1851, Ch. 122, §§ 1, 7.
Transcript, 67, 68.

At the same time no apportionment of profits to the stock can be made except from actual earnings without violating the express provisions of the law under which plaintiff in error is incorporated.

Laws of N. Y., 1875, Ch. 564, § 1; amending Laws of N. Y., 1851, Ch. 122, § 7.
Transcript, pp. 71 and 72.

Therefore, until the stock actually attains its par or maturity value, it cannot be set off against and cancel an "advance" to its holder of its par value, but only represents the actual amount paid in upon it, plus any apportioned profits.

Ante pp. 18 and 19.
Campbell *v.* Eastern B. & L. Assn., *supra.*

And under the unequivocal terms of the New York Act of 1851, as amended in 1875, a "redeemed" or "advanced" shareholder must continue to make payments upon his stock, even though the estimated maturity period has been exceeded.

"No holder of redeemed shares shall claim to be exempt from making *the monthly or other stated payments* provided in the articles of association, upon the ground that by reason of losses or otherwise, the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced, with legal interest thereon."

Laws of N. Y., 1875, Ch. 564, § 1,
Transcript, pp. 71 and 72.
Laws of N. Y., 1851, Ch. 122, § 7,

The same sections provide that the making of monthly payments and of "premiums," in addition to interest, shall not be deemed usury.

Laws of N. Y., 1851, Ch. 122, § 7.
Laws of N. Y. 1875, Ch. 564, § 1;
Transcript, pp. 68, 72.

Hence when the "advanced" or "redeemed" stock of defendants in error had not matured at the expiration of seventy-eight months from the date of its issue it became obligatory on the plaintiff in error and its officers to continue to collect monthly payments of dues, premiums and interest from the defendants in error until such time as the stock should actually mature, and the duty of defendants in error, as members, was to make such payments without question. Instead of doing so they first refused to continue their payments, and then instituted this action to secure the cancellation of their mortgage and recover a heavy penalty from plaintiff in error in addition.

Ante, pp. 16–19.

Having borrowed originally $5,000, the par value of their stock, advanced to them upon the pledge of the stock as collateral, they gave a mortgage to secure the payment of their stock in full with the understanding that when the stock attained

its par value it would be set off against the principal of their indebtedness, and both stock and loan would then be canceled. In the meantime they were to pay interest and premium, and in the profits derived therefrom they were themselves to share. But it was mistakenly estimated that the stock would mature in 78 months, and, therefore, notes to cover 75 full payments and three additional payments of premium and interest were given. Before the end of the 78 months the mistake was manifest. At the expiration of that period defendants in error had paid in upon their stock but $2,925 and profits of $199.50 had been credited thereto, so that the stock represented an actual value of but $3,121.50 (*ante*, pp. 18 and 19)

Nevertheless, on the ground that the contract was injurious to citizens of South Carolina, and that there was no constitutional obligation resting upon the courts of that State to observe the plain provisions of the laws of New York above cited, the Supreme Court of South Carolina paid the $5,000 debt of defendants in error with $3,125.50, and mulcted plaintiff in error in the additional sum of $1,800 as a penalty for not having voluntarily assented to the confiscation of its property by the defendants in error.

Contrast with this the views, upon the same state of facts, of that distinguished tribunal, the Supreme Court of Appeals of Virginia.

> Campbell *v.* Eastern B. & L. Assn., 37 S. E. Rep., 350.
>
> Eastern B. & L. Assn. *v.* Snyder, 37 S. E. Rep., 299.

Defendants in error paid upon their stock seventy-eight monthly payments of seventy-five cents per share. This amounted to but $58.50 per share, or upon fifty shares to an aggregate of $2,925. The credited profits to the fifty shares were but $199.50, or practically four dollars per share, making the paid in value of each share at the expiration of 78

months approximately $62.50, instead of the par or maturity value of $100. Therefore, under the articles of association of plaintiff in error and the laws of New York the obligation of defendants in error to continue their payments until the actual maturity of their stock remained, and this obligation was enforced not only by a covenant in their mortgage (*ante*, p. 10), but by an express provision of the corporate by-laws.

"All shareholders shall pay, or cause to be paid, a monthly installment of seventy-five cents on each share named in their certificate *until the same is fully paid.*"

By-Laws, Art. XIV., §§ 13 and 14, Transcript, p. 34.

Need we recur again to authorities already cited to show that "full faith and credit has not been given to the laws of New York; that plaintiff in error has been denied the "equal protection" of the laws and deprived of its property "without due process of law"?

The laws of New York were not "construed"; they were ignored! Their validity was expressly denied.

The only question was whether the *undisputed* law of New York as expressed in *unequivocal statutory provisions* should be held to govern the case, and the decision was that: "Whatever may be the laws of New York we do not think they should be enforced it this State."

Transcript, pp. 97, 101.

The Constitution is again "nullified" and the XIVth Amendment set at naught if this Court is without power and jurisdiction to revise the judgment of the Supreme Court of South Carolina in this case, and to enforce the laws of New York as constituent parts of the contract of the parties.

IX.

THAT A BUILDING AND LOAN ASSOCIATION CANNOT BY CONTRACT FIX THE MATURITY PERIOD OF ITS STOCK SO AS TO GUARANTEE AN ESTIMATED RATE OF PROFITS OR EARNINGS IS SETTLED LAW, NOT ONLY IN NEW YORK BUT IN EVERY JURISDICTION WHERE THE QUESTION HAS DIRECTLY ARISEN.

King *v.* International Assn., 170 Ill., 135, 142.
Royal Trust Co. *v.* Culver, 87 Ill. App. Rep., 630.
Bertche *v.* Equitable Loan Assn., 147 Mo., 343.
Schell *v.* Equitable, &c., Assn., 150 Mo., 103.
Province *v.* Interstate B. & L. Assn., (Tenn.), 58 S. W. Rep., 265.
Heslin *v.* Eastern B. & L. Assn., 28 Misc. (N. Y.), 376, 378.
Eastern B. & L. Assn. *v.* Snyder (Va.), 37 S. E. Rep., 298.
People's B. L. & S. Assn. *v.* Morris (Ark.), 56 S. W. Rep., 266.

Nor can the contention of the defendants in error that they were induced to become stockholders by representations that the stock would mature in seventy-eight months avail them as against this doctrine.

Upton *v.* Tibilcock, 91 U. S., 45, 50.
Demland *v.* Pioneer S. & L. Co., 20 Ohio Cir. Ct. Rep., 223.

X.

IN THE CASE AT BAR THE SUPREME COURT OF SOUTH CAROLINA HELD THAT ADVANCED OR BORROWING MEMBERS OF PLAINTIFF IN ERROR ARE ENTITLED TO HAVE THEIR MORTGAGES RELEASED AT THE EXPIRATION OF 78 MONTHS WITHOUT REGARD TO THE MATURITY OF THEIR STOCK, WHILE IN THE EBAUGH CASE, ALSO PENDING IN THIS COURT, UPON WRIT OF ERROR, THE SAME COURT HELD THAT NON-ADVANCED OR NON-BORROWING MEMBERS ARE ENTITLED TO RECOVER FROM PLAINTIFF IN ERROR THE PAR VALUE OF THEIR STOCK AT THE EXPIRATION OF 78 MONTHS, EVEN THOUGH THE STOCK HAS NOT, IN FACT, MATURED. THE ASSOCIATION IS A PURELY MUTUAL CORPORATION AND HAS ONLY THE TWO CLASSES OF SHAREHOLDERS ABOVE NAMED. HENCE BOTH DECISIONS CANNOT BE RIGHT, AND IN LAW NEITHER IS.

Welling and Bonnoitt Transcript, pp. 97 to 101, Opinion of the Court; 56 S. C., 280.
Ebaugh Transcript (Term No. 453), pp. 67 to 68, Opinion of the Court; 36 S. E. Rep., 535.
Ante, pp. 18 and 19.

In this case by its decision the Supreme Court of South Carolina confiscates the mortgages executed by borrowing members of plaintiff in error and relieves them of their obligations to repay the advance to them with premium and interest thereon. It thereby deprives plaintiff in error of its only source of profits from which its stock can be "matured," and at the same time gives defendants in error credit for $100 per share upon their stock on which they have only paid in $58.50 per share. Necessarily

this difference, to say nothing of the penalty exacted in addition, must be taken out of the capital stock of the corporation contributed by other shareholders.

On the other hand, by its decision in the Ebaugh case the same Court holds that a non-borrowing member who has paid in but $58 at the expiration of seventy-eight months from the date of his certificate is entitled to receive $100 per share from the plaintiff in error therefor.

From what source this difference is to come, the profits having been insufficient to mature the stock, the learned Supreme Court of South Carolina does not indicate!

Ebaugh *v.* Eastern B. & L. Assn., 36 S. E. Rep., 535; Ebaugh Transcript (Term, No. 453), pp. 67–68.

Brief of Plaintiff in Error (Ebaugh Case) in opposition to motion to dismiss, pp. 9–17, 27–28.

The two cases are the exact antithesis of each other. One robs the non-borrowing shareholders for the benefit of the borrowing members, the other robs both borrowing and non-borrowing members to pay off withdrawing stock that has not matured at the expiration of seventy-eight months, and both proceed upon the theory that a corporation can guarantee to all its stockholders of all classes a fixed rate of profits that will make the stock fully paid and withdrawable at its par value of $100 per share, although, in fact, less than 60 per cent. of the par value has been paid in upon the stock, and the profits do not amount to more than $4 per share at the end of the 78 months' period!

The Supreme Court of South Carolina clearly overlooks the nature of plaintiff in error as a purely mutual corporation.

Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.

People *v.* Lowe, 117 N. Y., 175.

Concordia Assn. *v.* Read, 93 N. Y., 474.
People *ex rel* Fairchild *v.* Preston, 140 N. Y., 549.

And by disregarding the laws of New York and the mutual, equal and reciprocal rights and duties of the members of plaintiff in error, destroys the mutuality of the corporation, improperly exercises visitatorial powers over it, and relies upon one erroneous decision to support another equally erroneous, both being rendered in violation of the Constitution of the United States, as, we believe, has already been demonstrated.

XI.

WE SUBMIT THAT THE FEDERAL QUESTIONS PRESENTED IN THIS BRIEF WERE FULLY RAISED AND SAVED IN THE STATE COURT, AND THAT THE DECISION OF THE SUPREME COURT OF SOUTH CAROLINA WAS AGAINST THE CONSTITUTIONAL RIGHTS CLAIMED BY PLAINTIFF IN ERROR. THIS CASE WAS, THEREFORE, PROPERLY BROUGHT TO THIS COURT BY WRIT OF ERROR AND MUST NOW BE DETERMINED HERE UPON ITS MERITS AND IN ACCORDANCE WITH A CORRECT CONSTRUCTION OF THE CONTRACT OBLIGATIONS OF THE PARTIES AS FIXED BY THE CHARTER AND BY-LAWS OF THE PLAINTIFF IN ERROR AND THE STATUTES AND JUDICIAL DECISIONS OF THE STATE OF NEW YORK.

" But the true and rational rule is, that the Court must be able to see clearly, from the whole record, that a certain provision of the Constitution or Act of Congress was relied on by the party who brings

the writ of error, and that the right thus claimed by him was denied."

Bridge Proprietors *v.* Hoboken Co., 1 Wall., 116, 143.

"We are aware that a right or immunity set up or claimed under the Constitution or laws of the United States may be denied as well by evading a direct decision thereon as by positive action. If a Federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects the claim, but avoids all reference to it, is as much against the right, within the meaning of § 709 of the Revised Statutes, as if it had been specifically referred to and the right directly refused."

Chapman *v.* Goodnow, 123 U. S., 540, 548.

Roby *v.* Colehour, 146 U. S., 153.

Dewey *v.* Des Moines, 173 U. S., 193, 199.

Koekuk, &c., Bridge Co. *v.* Illinois, 175 U. S., 626, 634.

It has already been pointed out that the "Federal questions" were raised in the Court below; relied upon there, and by that Court decided adversely "by necessary intendment" to the claims of plaintiff in error.

Ante, pp. 19–26.

And where the Federal question was necessarily raised and must have been decided adversely to the claim of plaintiff in error this Court will not dismiss the writ of error.

Eureka Lake, &c., Company *v.* Superior Court, 116 U. S., 410.

Des Moines, &c., Co. *v.* Iowa Homestead Co., 123 U. S., 552.

Green *v.* Van Buskirk, 5 Wall., 307.

It is for this Court to say, and it is its duty under the Constitution to determine, whether in its decision the Supreme Court of South Carolina gave to the laws of New York and the contract made under those laws the same effect that such laws and contract have in the courts of New York.

Green *v.* Van Buskirk, 5 Wall., 307, 311, 314.

Christmas *v.* Russell, 5 Wall., 290, 302.

Mills *v.* Duryee, 7 Cr., 481, 483, 484.

Carpenter *v.* Strange, 141 U. S., 87, 103.

Dupasseur *v.* Rochereau, 21 Wall., 130, 139.

Huntington *v.* Attrill, 146 U. S., 657, 666.

Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615, 622, 624.

Chicago, &c. R. Co. *v.* Sturm, 174 U. S., 710.

"It was insisted on the one side, and denied on the other, that the faith and credit which the judicial proceedings in the courts of the State of Illinois had by law and usage in that State, were denied to them by the Supreme Court of New York in the decision which was rendered.

"Whether this was so or not could only be properly considered when the case came to be heard on its merits; but this Court, in denial of the motion to dismiss, held that the Supreme Court of New York necessarily decided *what* effect the attachment proceedings in Illinois had by the law and usage in that State; and as it decided against the effect which Green claimed for them, this Court had jurisdiction under the clause of the Constitution which declares 'that full faith and credit shall be given in each State to the public acts, records and judicial proceedings in every other State,' and the Act of Congress of 1790, which gives to those proceedings the

same faith and credit in other States that they have in the State in which they were rendered."

Green *v.* Van Buskirk, 7 Wall., 139, 145.

That the opinion of the Supreme Court of South Carolina in the case at bar denies the claims of the plaintiff in error under the laws of New York, and denies full faith and credit to those laws is manifest upon the face of the opinion.

Transcript, pp. 97-101.

That the opinion is itself a part of the record in the case, and, therefore, may be looked to as such is shown by the certificate of the Clerk of the Supreme Court of South Carolina, wherein it is recited, "I do further certify that the opinion rendered by the Court in said case [is a] part of the record of said case."

Transcript, p. 116.

Hence, this Court may look to the opinion of the Supreme Court of South Carolina, as it does to opinions in cases coming up from the Supreme Court of Louisiana.

New Orleans Waterworks *v.* Louisiana Sugar Co., 125 U. S., 18, 27.
Egan *v.* Hart, 165 U. S., 188, 189.
Murdock *v.* Memphis, 20 Wall., 590, 633.

And a federal question having been raised and decided adversely to the contention of plaintiff in error, this Court has jurisdiction to determine this case upon its merits.

We think it has already been demonstrated that the Supreme Court of South Carolina refused to give full faith and credit to the laws and judicial proceedings of the State of New York.

The plain language of the New York statutes needs no interpretation or construction. Those statutes were merely denied effect by the Supreme Court of

South Carolina because that Court regarded itself as not bound "by comity" to give them effect. Thus the rule of constitutional obligation was ignored and the jurisdiction of this Court established.

What the New York law is we have already discussed sufficiently.

Admittedly the *O'Malley case*, relied upon and given in evidence by plaintiff in error, was a direct authority in support of the contention of plaintiff in error as to the meaning and effect of the New York law.

Transcript, p. 74; s. c., 92 Hun (N. Y.), 572.

It makes no difference that the O'Malley case was not decided by the court of last resort; it was not appealed from and has recently been followed in New York by the decision of a Court that in such a case, when the decision is unanimous, is a court of last resort.

House *v.* Eastern B. & L. Assn., 52 App. Div. (N. Y.), 163.
Code of Civil Procedure of N. Y. (1900), § 191.

That such decisions are entitled to full faith and credit in the courts of sister States is settled by the decisions of this Court.

Hollinger *v.* Davis, 146 U. S., 314, 319.

Besides, the decisions in the Court of Appeals of New York in the several cases which plaintiff in error gave in evidence upon the trial of this case below, construe the New York Acts of 1851 and 1875, and, together with the articles of association and by-laws of plaintiff in error, are conclusive as to the construction and effect of the New York statutes in question in New York.

Concordia Assn. *v.* Read, 93 N. Y., 474.
People *v.* Lowe, 117 N. Y., 175.
Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.

Having now presented to this Court as clearly as we are able the very interesting questions involved, we, most respectfully, submit this case.

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